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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL MURPHY and STEVEN
GOSLINE,

Plaintiffs,

v.

GREG W. SACKMAN, SCOTT ELLIOTT,
GIL KERLIKOWSKA, individually and in his
official capacity, and THE CITY OF
SEATTLE, a municipal corporation,

Defendants.

NO. **C08-0555**JCC

COMPLAINT FOR DAMAGES



08-CV-00555-CMP

Plaintiff Michael Murphy, through his attorney, Fred Diamondstone, and Plaintiff
Steven Gosline, through his attorney, Michael P. Iaria of Cohen & Iaria, allege:

I. PARTIES

1.1. Plaintiff. Plaintiff Michael Murphy is a resident of Seattle, King County,
Washington.

1.2. Plaintiff. Plaintiff Steven Gosline is a resident of Seattle, King County,
Washington.

1.3. Defendant Greg M. Sackman. Defendant Greg M. Sackman was employed by
the City of Seattle as a police officer at all times material to this case. He is a resident of the

SEA 016775 Summons Issued

1 State of Washington. All of his actions in this case were in the course and scope of his duties
2 as a Seattle police officer. Defendant Sackman is sued in his individual capacity.

3 1.4. Defendant Scott Elliott. Defendant Scott Elliott was employed by the City of
4 Seattle as a police officer at all times material to this case. He is a resident of the State of
5 Washington. All of his actions in this case were in the course and scope of his duties as a
6 Seattle police officer. Defendant Elliott is sued in his individual capacity.

7 1.5. Defendant Gil Kerlikowske. Defendant Gil Kerlikowske was employed by
8 the City of Seattle as the Chief of Police of the City of Seattle at all times material to this
9 case. He is a resident of the State of Washington. All of his actions in this case were in the
10 course and scope of his duties as Chief of Police of the City of Seattle. Defendant
11 Kerlikowske is a policy-maker for the City of Seattle. Defendant Kerlikowske is sued in his
12 individual and in his official capacity.

13 1.6. Defendant City of Seattle. Defendant City of Seattle is a municipal
14 corporation organized under the laws of the State of Washington.

15 II. JURISDICTION AND VENUE

16 2.1 Jurisdiction. This Court has personal and subject matter jurisdiction. 28 USC
17 Sec. 1331 and 1343. This Court has supplemental jurisdiction, 28 USC Sec. 1367.

18 2.2. Claim for Damages. Claims for Damages against the City of Seattle, and
19 naming all individual defendants, were properly filed with the City Clerk on January 3, 2008
20 (for Plaintiff Murphy) and on January 11, 2008 (Plaintiff Gosline). More than 60 days have
21 elapsed since the Claims were filed.

22 2.3. Venue. Venue is properly in the Western District of Washington.

23 III. FACTS

24 3.1 Facts. On April 13, 2005, as Plaintiffs were approaching a club in the Capitol
25 Hill neighborhood of Seattle, they encountered Seattle Police Sergeant Greg M. Sackman,
26 who had positioned himself near the entrance to the club and was surveilling the club

1 entrance, the club interior and the doorman. As another party, including Maikoiyo Alley-
2 Barnes, left, one individual, Thomas Gray, sought to engage Sgt. Sackman in a greeting, but
3 Defendant Sackman was not receptive. Mr. Gray, Mr. Alley-Barnes and a third member of
4 their party simply departed, but Mr. Gray dropped some item on the ground. In response to a
5 statement from Sgt. Sackman, Mr. Gray picked up the item, but he was not permitted to leave
6 the scene by Sgt. Sackman. Sgt. Sackman then undertook an "investigation" and ultimately
7 charged Mr. Gray with the offense of littering, notwithstanding the fact that he had picked up
8 the item following the Sergeant's comment. Detention of Mr. Gray for purposes of
9 conducting an investigation was unlawful under Washington law. As the sergeant proceeded
10 with his "investigation," Alley-Barnes calmly questioned Defendant Sackman. Alley-Barnes
11 observed the littering investigation proceed from a short distance. At this time, Plaintiffs
12 initially approached the scene. Plaintiffs did not threaten, nor interfere; Plaintiff Murphy
13 remained nearby, while Plaintiff Gosline left the area briefly for an errand, but returned soon.
14 During this time, a second police vehicle arrived, apparently in response to a request for
15 backup from Defendant Sackman. The second police vehicle was operated by officer Brian
16 M. Hunt. Hunt and other police officers who arrived soon thereafter then used what
17 appeared to be excessive physical force on Mr. Alley-Barnes in the street. That force
18 inflicted substantial and visible injuries to Alley-Barnes. Plaintiffs observed and witnessed
19 the beating from the nearby sidewalk. Plaintiff Murphy called out "That's way too much"
20 and other comments to dissuade the police from continuing to beat Alley-Barnes. Plaintiff
21 Gosline documented the beating by taking pictures with his camera-phone. Neither Plaintiff
22 Murphy nor Plaintiff Gosline obstructed nor in any way interfered with or delayed the actions
23 of any police officers at the scene. While Plaintiffs were witnessing the beating of Mr.
24 Alley-Barnes, plaintiffs were sprayed in the face with noxious chemicals by Defendant
25 Sackman, without reasonable cause. After Alley Barnes was taken into custody, Defendant
26 Sackman directed Defendant Elliott to arrest of Plaintiff Murphy. Elliott commented that the

1 incident occurred because of Plaintiff Murphy's "mouth." Defendant Elliott used excessive
2 and unnecessary force when he took Plaintiff Murphy into custody, by pushing him to the
3 ground, even though Elliott knew that Murphy was non-resistant. Plaintiff Gosline was
4 leaving the area and entering the adjacent business, the night club to which he had been
5 going in the first place, when Sackman or others directed Gosline's arrest and arrested him.

6 3.2 Seizure of Gosline's Cell Phone. The unlawful arrest of Gosline was
7 accompanied by the seizure of his cell phone. When the cell phone was returned to him the
8 next day, the photographs that he had taken of the Alley-Barnes beating had been deleted.

9 3.3 Charges and Acquittals. As a cover-up for the apparent use of excessive force
10 against Mr. Alley-Barnes, Defendant Sackman and other officers initiated the process of
11 arresting and charging these Plaintiffs for obstruction. These charges were initiated without
12 merit or probable cause. At the conclusion of the prosecution, on the fourth day of trial,
13 Seattle Municipal Court Judge Jean Rietschel dismissed the charges against Plaintiffs, due to
14 lack of evidence.

15 3.4 Prior History of Misconduct. Defendant Sackman had previously been the
16 subjects of other complaints of misconduct and Sgt. Sackman had previously engaged in
17 other reckless conduct which resulted in injury to another officer.

18 3.5 Failures to Train and Discipline. Defendant Chief Kerlikowske has failed to
19 follow recommendations from Seattle police auditor, Katrina Pflaumer to train police officers
20 to prevent minor incidents from escalating into major confrontations as recommended by
21 police auditor Pflaumer in her reports covering the period January through September 2004
22 and October 2004 through March 2005. Prior to Ms. Pflaumer's recommendations, the
23 previous auditor, former Judge Terrence Carroll, also suggested action be taken with respect
24 to police overreaction. The failure of Defendant Kerlikowske to follow these repeated
25 recommendations, including recommended training for de-escalation techniques, represents a
26 policy decision by Defendants Kerlikowske and the City of Seattle to allow police officers

1 and first line supervisors to escalate minor incidents, such as Mr. Gray's littering incident,
2 into major police confrontations involving the use of force, which proximately caused the
3 Plaintiff's damages in this case. Additionally, Defendant Kerlikowske has failed to follow
4 recommendations for discipline up the chain of command through the process of internal
5 investigation by the Office of Professional Accountability, which has also encouraged police
6 lawlessness. These actions by Police Chief Kerlikowske are also customs, practices and
7 policies of the City of Seattle with respect to allowing a level of police brutality to occur.

8 3.6 Concealment of Evidence. Defendant Seattle failed to provide exculpatory
9 evidence, specifically the video-tape from Officer Elliott's patrol car, until after the charges
10 against these plaintiffs had already been dismissed. The withholding of evidence by Seattle
11 Police officials, including Seattle Police Legal Advisor Leo Poort, caused the Seattle
12 Municipal Court to ultimately dismiss the assault and obstruction charges against Alley-
13 Barnes, as well..

14 3.7 Agency. The actions of Defendants Sackman, Elliott and Kerlikowske, as
15 well as those City officials and employees who withheld evidence, were all carried out by
16 these individuals as employees of the City of Seattle, within the scope of employment. At all
17 times Defendants Sackman, Elliott and Kerlikowske and the officials who withheld
18 exculpatory evidence were acting as agents of the City of Seattle.

19 3.8 Racial Discrimination. Plaintiff Murphy is African American; Plaintiff
20 Gosline is Caucasian but was perceived to be an associate of Mr. Murphy. This incident
21 arose in relation to the unlawful investigation of Thomas Gray for littering and the unlawful
22 arrest of Maikoiyo Alley-Barnes, initially for obstruction. Both Mr. Gray and Mr. Alley-
23 Barnes are African-Americans. The City of Seattle and its Police Department has a policy,
24 practice and/or custom of arresting African-Americans, and their known associates, for the
25 crime of obstruction at a significantly higher rate than Caucasians.
26

4.1 First Cause of Action. Defendants Sackman, Elliott and the City of Seattle are liable to Plaintiff Murphy and Defendants Sackman and Seattle are liable to Gosline for the tort of assault.

4.3 Third Cause of Action. Defendant City of Seattle is liable to Plaintiffs Murphy and Gosline for the tort of malicious prosecution.

4.5 Civil Rights Violations. Defendant Kerlikowske is liable to Plaintiffs pursuant to 42 USC Sec 1983 for the failure to adequately train and supervise and discipline police officers, including Defendant Sackman, with respect to the Fourth Amendment, as well as the Fourteenth Amendment's equal protection provision. To the extent that

COMPLAINT FOR DAMAGES - 6

1 Defendant Kerlikowske's actions were with callous indifference or reckless disregard to the
2 rights of Plaintiffs and similarly situated individuals, Defendant Kerlikowske is liable for
3 punitive damages.

4 4.6 Civil Rights Violations. The City of Seattle is liable to Plaintiffs for violation
5 of Plaintiffs' civil rights to the extent that the failure to train, supervise and discipline police
6 officers, with respect to the Fourth Amendment, as well as the Fourteenth Amendment's
7 equal protection provision. is a policy, practice or custom of the City of Seattle. 42 USC Sec.
8 1983.

9 WHEREFORE, Plaintiffs pray for the following relief:

- 10 A. Damages and punitive damages in an amount to be proven at trial. Plaintiffs
11 seek punitive damages against all defendants other than the City of Seattle;
12 B. Costs and reasonable attorney's fees; and
13 C. Such other and further relief as the Court deems just and proper.

14 DATED this 17 day of March, 2008.

15 LAW OFFICES OF FRED DIAMONDSTONE

16 

17 Fred Diamondstone, WSBA No. 7138
18 Attorney for Plaintiff Murphy

19 COHEN & IARIA

20 

21 Michael P. Iaria, WSBA No. 15312
22 Attorney for Plaintiff Gosline